

1 THOMAS P. O'BRIEN  
United States Attorney  
2 SANDRA R. BROWN  
Assistant United States Attorney  
3 Chief, Tax Division  
PAUL H. ROCHMES, State Bar No. 077928  
4 Assistant United States Attorney  
1300 United States Courthouse  
5 312 North Spring Street  
Los Angeles, California 90012  
6 Telephone: (213) 894-2413  
Facsimile: (213) 894-6436  
7 Email: paul.rochmes@usdoj.gov  
8 DOROTHY C. KIM, State Bar No. 206333  
Assistant United States Attorney  
9 Criminal Division/Major Frauds Section  
Telephone: (213) 894-3779  
10 Facsimile: (213) 894-6269  
E-mail: dorothy.kim@usdoj.gov  
11

Attorneys for Plaintiff  
12 United States of America  
13

14 UNITED STATES DISTRICT COURT  
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16		) CR 07-137-DSF
17	UNITED STATES OF AMERICA,	)
18	Plaintiff,	) FINDINGS OF FACT AND
19	v.	) CONCLUSIONS OF LAW UNDER SPEEDY
20	MATTHIAS CHARLES VHERU,	) TRIAL ACT REGARDING CONTINUANCE
21	Defendant.	) OF TRIAL DATE AND CORRECTED
22		) [PROPOSED] ORDER CONTINUING
23		) TRIAL AND PRE-TRIAL CONFERENCE
24		)
25		) Continued Trial Date:
26		) January 27, 2009
27		) Time: 8:00 a.m.
28		) Courtroom: 840 (Roybal Federal
		) Building)
		)

---

1       GOOD CAUSE APPEARING, the Court hereby finds and orders as  
2 follows.

3       BACKGROUND

4       1. The Court conducted a status conference on January 5,  
5 2009. At the conclusion of the status conference, the Court set  
6 a final status conference for January 12, 2009.

7       2. On January 9, 2009, the defendant filed a Status Report  
8 which advised the Court that (1) defendant's trial counsel,  
9 Steven Haney, had conjunctivitis and extreme bronchitis and had  
10 been advised not to return to work before January 13, 2009, and  
11 (2) Mr. Haney's associate, Michelle Tamkin, was also seriously  
12 ill. The Status Report requested that the status conference be  
13 continued to January 14, 2009. (Docket No. 196).

14       3. In response to the Status Report, the Court continued  
15 the status conference to January 14, 2009.

16       4. At the January 14, 2009 status conference, Mr. Haney  
17 advised the Court that he had not recovered from his illness,  
18 that his physician had told him that he was still infectious, and  
19 that he was not certain whether he would be fully recovered by  
20 January 20, 2009, the date that had been set for trial.

21       5. In response to Mr. Haney's statements regarding his  
22 health, and after conferring with counsel for the government, the  
23 Court continued the trial for one-week, to January 27, 2009, in  
24 the interests of justice and the defense counsel's health, and  
25 set a further final pretrial conference for January 20, 2009 at  
26 8:30 a.m. (Docket No. 221).

27       6. On January 20, 2009, the parties submitted a stipulation  
28

1 (the "Stipulation") and proposed findings under the Speedy Trial  
2 Act, 18 U.S.C. § 3161 et. seq.

3 FINDINGS OF FACT AND CONCLUSIONS OF LAW

4 7. The Court makes the following findings of fact and  
5 conclusions of law, based on the defendant's January 9, 2009  
6 status report, the defendant's counsel's statements at the  
7 January 14, 2009 status conference, the parties' representations  
8 in the Stipulation, and the records and files in this case:

9 (a) It is and was reasonable to continue the trial to  
10 January 27, 2009, in light of the defendant's counsel's  
11 continuing illness;

12 (b) The defendant's counsel cannot adequately prepare  
13 for the trial within the time limits established under the Speedy  
14 Trial Act;

15 (c) The defendant's counsel believes that continuing  
16 the trial to January 27, 2009 is and was necessary to enable him  
17 to have adequate time to prepare to represent the defendant  
18 effectively at trial, taking into account the exercise of due  
19 diligence; the defendant's counsel further believes that failing  
20 to continue the trial to January 27, 2009, would result (and  
21 would have resulted) in a miscarriage of justice;

22 (d) The defendant's counsel has advised the defendant  
23 of the defendant's rights under the Speedy Trial Act;

24 (e) The defendant concurs with his counsel that  
25 continuing the trial to January 27, 2009 is and was necessary to  
26 enable his counsel to be in a position to represent the  
27 effectively, in light of his illness;

1 (f) The time period from January 20, 2009 to January  
2 27, 2009 constitutes a reasonable period of delay.

3 (g) Based on the above-stated findings, the ends of  
4 justice served by continuing the case as requested outweigh the  
5 interest of the public and the defendant in a trial within the  
6 original dates prescribed by the Speedy Trial Act.

7 (h) For the purpose of computing time under the Speedy  
8 Trial Act within which trial must commence, the time period of  
9 January 20, 2009 to January 27, 2009 is deemed excludable  
10 pursuant to 18 U.S.C. §§ 3161(h)(8)(A) and 3161(h)(8)(B)(iv),  
11 because (1) the time period results from a continuance granted by  
12 the judge at the defendant's request on the basis of the judge's  
13 finding that the ends of justice are served by taking such  
14 action, (2) failure to continue the case to January 27, 2009, as  
15 requested, would deny counsel for the defendant the reasonable  
16 time necessary for effective preparation, taking into account the  
17 exercise of due diligence, and (3) failure to continue the case  
18 to January 27, 2009 would likely result in a miscarriage of  
19 justice.

20 8. Nothing in these Findings of Fact and Conclusions of Law  
21 shall preclude a finding that other provisions of the Speedy  
22 Trial Act dictate that additional time periods are excludable  
23 from the period within which trial must commence.

24  
25 ORDER CONTINUING TRIAL AND STATUS CONFERENCE

26 Based on the foregoing, and good cause appearing, it is  
27 hereby ordered that the trial shall be continued to January 27,  
28

1 2009 at 8:00 a.m.

2  
3 Dated: January 22, 2009

---

HONORABLE DALE S. FISCHER  
UNITED STATES DISTRICT JUDGE

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17 Presented By:

18  
19 

---

PAUL H. ROCHMES  
20 Assistant United States Attorney  
21  
22  
23  
24  
25  
26  
27  
28